

NATIONAL HEADQUARTERS
CIVIL AIR PATROL
500 FIFTH AVENUE
NEW YORK 18, NEW YORK

GM-126

25 April 1944

SUBJECT: CAP Guards for Military Aircraft.

TO: Wing Commanders.

1. Various members of Civil Air Patrol have from time to time been called upon by Army pilots to guard Army planes which have been grounded at points where no military guard facilities are available. In connection with such work, questions have arisen as to the liability of a CAP Unit or a CAP guard for damage done to the plane or to trespassers, and as to the exact status of CAP members when serving as guards.

2. These questions have been presented to the Air Judge Advocate for decision and your attention is called to the following ruling:

"The employment of civilian guards under such circumstances, in the absence of available enlisted personnel, is authorized by the provisions of AR 35-6300, Cl, 8 a, e. Payment is authorized at the rate paid for similar services in the vicinity and should be accomplished by the use of Form 15, which is the Form prescribed for use of aircraft crews in making emergency purchases and other expenditures during cross-country flights (AAF Regulation No. 15-15, paragraph 15).

While performance of guard duty is not a prescribed function of the Civil Air Patrol under provisions of AAF Regulation No. 20-18 covering organization of the Patrol, this office is advised by Colonel Johnson, the National Commander, that he has authorized assignment of members of different Patrol Squadrons to such work.

It results that, although the personnel performing guard duty are members of the Civil Air Patrol, they must be considered as Government employees, while serving as guards under the detailed circumstances, for which service they are paid compensation.

In light of the foregoing circumstances and pertinent regulations, this office is of the following opinion on the questions raised:

- a. If the guarded Government-owned planes are damaged by fire or accident, the only liability would be that of the guards as individuals, depending on the degree of negligence or other basis of liability involved.
- b. Liability of the Government to third parties injured or killed by these guards while acting in line of duty would be governed by the Domestic Claims Act (Public Law 112 - 78th Cong.), providing for settlement of claims in an amount not in excess of

\$1,000.00 for personal injury or death caused by civilian employees of the War Department or of the Army while acting within the scope of their employment. Claims in excess of \$1,000.00 may, under the provisions of the Act, be reported by the Secretary of War to Congress for its consideration.

c. Under AGO Letter 250.4 (15 February 1944) OB-S-A, it is provided that no general court-martial shall try any civilian subject to military law under Article of War 2(d) until the appointing authority shall have received special authorization in each instance from the Secretary of War. Under the provisions of this letter, the Judge Advocate General is directed to sign, authenticate, and issue or withhold any such authorization by the authority of and for the Secretary of War. It is believed that these guards would be considered as "persons accompanying or serving with the Armies of the United States in the field," within the provisions of Article of War 2(d) and hence subject to military law. However, on the assumption that they are so included, they could not be tried by court-martial without sanction of the Secretary of War under the provisions of the cited directive.

d. On the question of carrying firearms to and from places of duty, it is the opinion of this office that in cases when the guards are ordered to carry arms by competent Government authority to and from work, there would be no ground for convicting them of illegally being in possession of weapons. In the absence of such orders or authority, they would be required to have necessary permits from State or Municipal authorities."

3. It should be noted that the above ruling is predicated on the fact that the job of guarding Army aircraft at the request of Army pilots will in all cases be undertaken by CAP members on an individual basis. In no instance should a particular job be undertaken by a Unit as such, and the Unit should have no part in arrangements for the performance of such a job or for payment thereof. All such arrangements should be made individually by the CAP members who are actually going to perform the job.

4. The attention of individuals who may perform such jobs is invited to the last paragraph of the Air Judge Advocate's Ruling quoted above to the effect that they should not carry arms unless proper arrangements have been worked out with, or necessary permits have been obtained from, State or Municipal authorities.

By direction of National Commander JOHNSON:

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